



BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Robert De Vries

Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 070061

Petitioners, Daniel Jurayj and Katharine Silbaugh, applied to the Building Department for a permit to make alterations to the rear of the dwelling and to extend the existing side driveway at their property on 68 Amory Street. The application was denied and an appeal taken to this Board.

On November 1, 2007 the Board of Appeals met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed December 13, 2007 at 7:30 p.m., 2nd floor, Main Library, as the time and place of a hearing on the appeal. On the day of the hearing, a weather related state of emergency was declared and the hearing was postponed to January 10, 2008 at 7:00 p.m., 2nd floor, Main Library. Notice of the postponed hearing was mailed to the Petitioners, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the postponed hearing was published December 20 and 27, 2007 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEALS
NOTICE OF HEARING

Pursuant to M.G.L., C.39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: JURAYJ, DANIEL AND SILBAUGH, KATHERINE

Location of Premises: 68 AMORY ST BRKL

Date of Hearing: 01/10/2008

Time of Hearing: 07:00 p.m.

Place of Hearing: Main Library, 2nd fl.

A public hearing will be held for a special permit and/or variance from:

- 1) 5.20; Floor Area Ratio; Variance Required.**
- 2) For the Design of All Off-Street Parking Facilities**
6.04.5. c. 1; Variance Required.
6.04.5. c. 2; Variance Required.
6.04.5. c. 3; Variance Required.
6.04.9. b; Variance Required.
6.04.12; Special Permit Required.
- 3) 8.02.2; Alteration or Extension; Special Permit Required.**

Of the Zoning By-Law to construct exterior additions and to reconstruct and extend the driveway per plans at **68 AMORY ST BRKL**.

Said Premise located in a **SC-7** District.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

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Present at the hearing was Chair, Enid Starr and Board Members Kathryn Ham and Jonathan Book. The owners, Daniel Jurayj and Katharine Silbaugh, were represented by Kenneth Hoffman of Holland and Knight LLP, 10 St. James Avenue, Boston, MA. 02116-3889.

Mr. Hoffman described the property and the application with reference to the Planning Board report.

68 Amory Street is a large Tudor-style stucco and brick dwelling located directly across from the intersection of Amory Street and Freeman Street. The site is in the Cottage Farm Local Historic District. The surrounding neighborhood is residential consisting of primarily single-family dwellings. The property is in an SC-7 (single family and converted for two family) zoning district. In 1968, the Board of appeals granted relief to convert the house to a two family dwelling and, in fact, the interior layout of the house, in part, because of the two "wings" in the rear, is conducive to a two family configuration. It is this configuration that the Petitioners wish to resolve in order to restore the interior layout in keeping with a single family configuration. As will be described, the work is in the nature of an "infill" of the space between the wings of the house. The Preservation Commission approved the proposed alteration as the property is located in a local historic district and because both the front and rear facades can be seen from a public way, Amory Street and Powell Street, respectively, alteration of the front and rear facades requires such approval.

The applicants, Daniel Jurayj and Katharine B. Silbaugh, propose to make alterations to the rear of the dwelling, primarily to improve the building's interior layout and the rear façade. In addition, the applicants would like to extend the currently existing side driveway. The main building alteration would be a single-story with a basement addition located between the building's two rear "ells" or "wings". This addition would provide for a new mudroom and

passageway on the first floor and a new basement storage area. A new patio at the rear of this addition would be constructed over a stairway leading to the basement. The roof of the addition would serve as a deck and provide access between the second-floor rooms at the rear of the building. A new bay window would be constructed at the rear of one of the second-floor rooms, providing a small amount of additional floor area and some architectural detail to the rear façade, but the bay would not extend beyond the deck.

The applicants also would like to extend the existing driveway towards the rear lot line by approximately 8 feet. This extension would line up the end of the driveway with a new walkway and stair for the new patio, and it will allow for three tandem parking spaces in the driveway. An existing small wooden deck on the side of the dwelling would be removed to enable this extension.

Mr. Hoffman presented an aerial rendering of the Amory Street neighborhood to show the location of the subject property as lying between Amory Street and Powell Street and used the rendering to illustrate the fact that the property, located in a Town of Brookline designated historic district, is subject to Preservation Commission jurisdiction, both on the front of the building on Amory Street and due to the fact that the rear of the property can be seen from Powell Street, the Preservation Commission jurisdiction applies to the rear elevation of the house as well. This is significant, Mr. Hoffman reported, because the Preservation Commission's jurisdiction would otherwise not apply to the rear façade changes of the house which is the subject of this zoning appeal. Mr. Hoffman noted that the Preservation Commission was in full support of the request to renovate and restore this historic home at 68 Amory Street as was the Planning Board, and that the abutters were in full support as evidenced by letters submitted by Mr. Hoffman to the Board. Mr. Hoffman also presented plans prepared by Kunz Associates of 38 Greenwich Park, Boston, MA

02118, entitled "Renovations and Restoration of Historic Brookline Home 68 Amory Street, Brookline, Mass." In particular, Mr. Hoffman presented a plan of the existing first floor which showed that the house as presently configured consists of basically two wings in the rear separated by an "alleyway" of approximately 10ft. in width. Mr. Hoffman described that the basic proposal was to fill in this alleyway which he approximated in square footage as only marginally larger than the conference room table at which the Board was holding its hearing. Thus he suggested that while the infill project would make an enormous difference in restoring and unifying the interior configuration of the house, the actual request constituted a de minimis departure from the floor area ratio and thus was appropriate for the grant of a variance.

Mr. Hoffman also noted that the premises, although exceeding the permitted floor area ratio, and thus not eligible for a floor area ratio special permit, contained no garage unlike many of the other houses on the street where there were garages available for the storage of playground and gardening equipment as well as vehicles. Mr. Hoffman suggested that one of the principal benefits of this project was to create indoor storage space. This, he suggested, would further the objectives of Section 5.22 of the Zoning By-law, which provides under Subsection 1(e) that where there is an interior conversion of space in a residential dwelling, the interior conversion shall not result in the displacement of interior storage of equipment, vehicles or materials to the location which is now exterior to the house. This proposal is effectively creating indoor storage facilities for materials which are now stored outside and could otherwise be stored in the garage were there room for a garage on the parcel.

The application also furthers the intent of the Zoning By-law under Article 1 entitled "Purpose and Scope" which states one purpose of the By-law is "to encourage the most appropriate use of land 'and' to encourage the preservation of historically and architecturally

significant structures." The Board noted and acknowledged that no other structure was similarly configured in the immediate neighborhood and that allowing for a variance of a de minimis nature was justified. Mr. Hoffman noted the case of Wolfman v. Board of Appeals of Brookline decided by the Mass. Appeals Court in 1983, which held that "even relatively minor hardship can justify a variance where inconsequential dimensional variances are involved. As a general matter, a lesser showing a hardship is appropriate for dimensional variances because they usually do not change the character of the zoning district or endanger nearby properties within the consistent land use." Mr. Hoffman pointed out that being able to reconcile the interior configuration of the house to be more consistent with a single family dwelling and where the house is located in an historic district and therefore such renovations cannot be accomplished without the approval of the Preservation Commission, renders the building sufficiently unique. Mr. Hoffman noted the case of Johnson vs. Board of Appeals of Wareham decided by the Supreme Judicial Court in 1972 where existing buildings that are structurally sound, have remaining value and are not well suited to conforming uses have also been found sufficient, apart from all other considerations, to establish the uniqueness of the lot in question so as to satisfy the prerequisites for a variance under M.G.L., c. 40A, § 1 O. Here the house, which was approved for conversion to a two family by special permit in 1969, is better suited to a single family home and the nature of the proposed alterations and additions will create a configuration better suited and safer to such an occupancy. Moreover, the restoration of the rear facade to an appearance more appropriate to the historic district in which the property is located will further the goals of the By-law with no detriment to the neighborhood.

Mr. Hoffman also pointed out that a special permit is being sought in order to allow for changes and adjustments in the off street parking facilities, that is the driveway is being extended to make accommodation for three automobiles to comfortably fit onto the existing site. The

revised parking locations comply with the front and rear yard setback. The side yard setback for parking facilities requires a 5 ft. dimension. No setback exists and none is proposed. This relief can be accomplished by a special permit. Mr. Hoffman noted that this is an existing condition which is not being altered and therefore is appropriate for a special permit under 6.04.12 where new parking facilities are being installed to serve existing structures and land uses.

Finally, Mr. Hoffman pointed out that a special permit is needed under Section 8.02.2, Alteration or Extension, and that the basis for the special permit has been satisfied, as evidenced by both the unanimous support of alternations by the Preservation Commission and the Planning Board.

The petitioners' architect, Eben Kunz, presented the interior and exterior elevation plans for completion of the improvements describing how the rear façade would be completed in accordance with the requirements of the Historic District as approved by the Preservation Commission. The infill area would be enclosed and used in part as access to a storage area in the basement in order to remove planting and garden equipment and other items normally kept in a garage to be stored inside the building envelope in furtherance of the goals of the Zoning By-law.

The Chair then asked whether anyone desired to speak in favor or in opposition to the proposal and there were no persons who responded.

The Board then made some additional inquiries as to the circumstances relating to the uniqueness of the structure and recognized that granting of the appeal would further both the interests of the Historic District, the Zoning By-law and the interests of the neighborhood, as evidenced by letters from abutters submitted by Mr. Hoffman to the Board expressing full support for the petition.

Laura Curtis, Planner with the Town Planning Department, presented the findings and relief requested for the project.

Section 5.20 – Floor Area Ratio

Section 6.04 – Design of All Off-Street Parking Facilities

.5.c.1 – front yard setback

.5.c.2 – side yard setback

.5.c.3 – rear yard setback

.9.b – driveways shall be graded, surfaced with asphalt or other suitable material, and drained to the satisfaction of the Building Commissioner

Section 8.02.2 – Alteration or Extension: Special permit required.

FLOOR AREA

	<u>Allowed By Right</u>	<u>Existing</u>	<u>Proposed</u>	<u>Finding</u>
Floor Area Ratio (F.A.R.)	0.35 (100%)	0.71 (201%)	0.73 (208%)	<u>Variance*</u>
Floor Area (s.f.)	2,820.65	5,686	5,871	--

* Under Section 5.22.3.c, the Board of Appeals may allow by special permit an increase in floor area of 350 square feet or less, provided the resultant floor area does not exceed 150% of the permitted gross floor area. This proposal would increase the floor area by 185 square feet, but the dwelling **already exceeds** the 150% limit, thus the application **requires a variance**.

PARKING

<u>Setback</u>	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>	<u>Finding</u>
Front yard	20 feet	0 feet (est.)	28 feet (est.)	<u>Complies†</u>
Side yard	5 feet	0 feet (est.)	0 feet (est.)	<u>Variance / Special Permit**</u>
Rear yard	5 feet	39 feet (est.)	24 feet (est.)	<u>Complies</u>

† There is an existing small parking space located in front of the dwelling to the right of the entryway. The submitted plan does not indicate this area being used for parking, but the existing curb cut does lead to this space. This is an existing condition that is not being altered.

** Under Section 6.04.12, the Board of Appeals may allow by special permit the substitution of other dimensional requirements for new parking facilities that are being installed to serve existing structures and land uses.

Ms. Curtis stated that the Planning Board is not opposed to this proposal for a rear addition and driveway extension. The addition is located so that it will not have any significant impact on neighboring properties, but it will still meet the needs of the residents. The addition will be

completely surrounded on three sides by the existing structure. The proposal will improve the appearance of the structure's rear façade, and the plans have already been approved by the Preservation Commission. The driveway extension will allow for three cars to be comfortably parked in a tandem fashion in the driveway. The site will still have ample open space in the rear, front and side yards despite the driveway extension. Therefore, should the Board of Appeals determine the requirements for a variance have been met, the Planning Board recommended approval of the proposal and the submitted plans, titled "Renovations and Restoration of Historic Brookline Home, 68 Amory Street," prepared by Kunz Associates and last dated 11/19/07, and the site plan prepared by VTP Associates and last dated 10/4/07, subject to the following condition:

- 1. Prior to issuance of a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final elevations of the addition, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

The Board requested Mr. Hitchcock, examiner for the Building Department, to state the Building Department's position on the application. Mr. Hitchcock said the Building Department had no objection to the application and said the increase in the FAR is relatively minor.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that is desirable to grant Special Permits under Section 6.04.12 and Section 8.02.2 of the Zoning By-law. The Board makes the following findings pursuant to Section 9.05:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

The Board also finds that the shape of the house with two wings projecting into the rear yard and the fact of the Preservation Commission jurisdiction applying to the rear façade are sufficiently unique to this property and that the attendant burden on the Petitioners in being able to make, but for the excess floor area ratio, reasonable use of the property creates sufficient hardship to sustain a variance, particularly where no detriment will result to the character of the zoning district or nearby properties. In fact, both will benefit from the Preservation Commission approved alteration.

Based on the foregoing, the Board voted unanimously to grant the Special Permits and the floor area ratio variance relief with the following condition:

Prior to issuance of a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final elevations of the addition, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
the Board of Appeals

Filing Date: January 18, 2008

A True Copy

ATTEST:



Patrick J. Ward
Clerk, Board of Appeals



Enid Starr

Twenty days have elapsed and
no appeal has been filed.

A True Copy:

ATTEST:



Patrick J. Ward
Town Clerk